

## FEDERAL-STATE COMMUNICATIONS JOINT BOARD

SEPTEMBER 17, 1971.—Ordered to be printed

MR. PASTORE, from the Committee on Commerce,  
submitted the following

### REPORT

[To accompany H.R. 7048]

The Committee on Commerce, to which was referred the bill (H.R. 7048) to amend the Communications Act of 1934, as amended, to establish a Federal-State Joint Board to recommend uniform procedures for determining what part of the property and expenses of communication common carriers shall be considered as used in interstate and expenses shall be considered as used in intrastate and exchange or foreign communication toll service, and what part of such property service; and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

The text of the bill is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. This Act may be cited as the "Federal-State Communications Joint Board Act".

SEC. 2. The Communications Act of 1934, as amended, is further amended by adding a new subsection (c) at the end of section 410 (47 U.S.C. 410) to read as follows:

"(c) The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this Act, may refer any other matter, relating to a common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition,

the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board."

#### PURPOSE OF LEGISLATION

The purpose of this legislation (H.R. 7048, as reported by the committee), is to establish a Federal-State Joint Board to consider matters regarding jurisdictional separation of communications common carrier property and expenses between interstate and intrastate operations. It would establish a procedure whereby both Federal and State representatives participate in separations proceedings which were previously considered primarily at the Federal level, but it would retain in the Federal Communications Commission superintendence of the regulation of interstate telephone rates.

##### *A. Separations*

Title II of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201 ff. provides for regulation of interstate communications common carriers by the Federal Communications Commission. The Commission, in determining whether the rates charged by the various carriers are reasonable, must first determine a rate base for the utility. Thus it must determine the costs of rendering the service which the utility recovers from the public in the form of rates. The carrier is entitled to earn a reasonable return on its plant investment in common carrier service and to recoup its expenses reasonably incurred in furnishing the service.

Telephone utilities, however, are subject both to Federal and State regulation. The Federal Government regulates interstate carrier services while the States exercise jurisdiction over intrastate toll and local exchange services. While the jurisdictions are separate for interstate and intrastate services, the plant facilities are to a great extent the same for both. The household telephone instrument, for example, is the same whether the call is made intrastate or interstate. Thus, in order for each jurisdiction effectively to exercise its authority, procedures are needed to apportion the costs for services under each jurisdiction.

Separation of costs for each jurisdiction is not subject to precise definition. Nevertheless, the allocations of costs must be reasonable,

i.e., the rate base for each jurisdiction must have appropriate correlation to the different uses of the commonly used plant. See *Smith v. Illinois Bell Telephone Co.*, 232 U.S. 133 (1930); *Minnesota Rate Cases*, 230 U.S. 352, 435 (1913). Accordingly, the Commission is not free arbitrarily to determine the rate base, but rather, it must first ascertain the plant costs and expenses upon which to base interstate telephone rates.

The telephone industry in the United States is vast. In 1969, for example, over 100 million telephones accounted for approximately 169 billion calls of which 9½ billion were toll calls (intrastate and interstate). The Bell System accounted for 96 million of these telephones and 160 billion calls. Out of 577 million miles of wire (including cables) for telephone carriers, the Bell System owned 554 million miles. The gross plant investment of all telephone carriers was \$51.7 billion with Bell's plant investment amounting to \$48.7 billion, and total operating revenues in 1969 were \$16.8 billion for all carriers, \$16 billion of which was Bell's. The Federal Communications Commission regulates approximately 30 percent of the Bell System plant; the States regulate the rest.

Although the States regulate, in the aggregate, 70 percent of Bell's plant investment, no one State has jurisdiction over as much as the approximately 30 percent regulated by the Federal Communications Commission, and the interests of the various States can be different. More importantly, the Federal Government preempts the States in the area of Federal jurisdiction. Thus, if the Commission declares its rate base to include certain costs, these costs are not used in determining a State's rate base; conversely, if the Federal Communications Commission does not use certain costs, the State may be left with these costs in determining its rate base—and correspondingly higher rates for local services to the local consumer.

The determination of the rate base at the Federal level then, has a strong relation to the rates which are charged at the local level. Accordingly, the procedures for establishing the separations of plant and expenses at the Federal level have invoked great concern among the States as manifested by the interest expressed by the National Association of Regulatory Utility Commissioners (NARUC).

When, for technological or other reasons, Bell's rate of return is expected to exceed reasonable limits, the Federal Communications Commission can move to reduce interstate rates. Since the Commission was formed in 1934, it has consistently reduced interstate rates. These reductions are not to be confused with shifts in revenue requirements resulting from modifications in separations procedures. Since such shifts cannot be arbitrary, they cannot be occasioned by the fact that Bell would otherwise have excess earnings. Nevertheless, shifts of revenue requirements from intrastate to interstate operations do reduce the interstate rate of return. The Commission has made such shifts, prior to 1970, in several occasions as follows:

SEPARATIONS CHANGES TRANSFERRING REVENUE REQUIREMENTS FROM STATE TO INTERSTATE OPERATIONS  
PRIOR TO 1970<sup>1</sup>

[In millions of dollars]

Year	Change	Revenue requirement (time of change)	Revenue requirement (current value)
1947	Simplification in methods	13	80
1952	Charleston plan	30	235
1956	Modified Phoenix	40	140
1962	Simplification in methods	46	90
1965	Exchange plant plan	134	177
1969	FCC plan	108	108
1969	Mechanical changes	35	35
Total		406	865

<sup>1</sup> It should be noted that annual revenues of the Bell System increased during this period (1947-1969) from \$4,000,000,000 to 14,500,000,000.

*B. FCC-NARUC cooperation*

The above separations revisions resulted from either the recommendations of a committee of staff members of the Federal Communications Commission and State commissions, formed in 1941 to formulate equitable and simple separations procedures, or from Federal Communications Commission hearings on the subject (such as Docket No. 16258). In addition, the Commission has provided for NARUC observers at informal conferences with the Bell System under the "continuing surveillance" procedures. "Continuing surveillance" is a continuous study and review of the carrier's interstate earnings whereby the Commission and the carrier agree to voluntary rate reductions when warranted by the company's overall level of earnings. This procedure, according to the Commission, reduces the regulatory lag which is usually present in drawn-out hearings; it also saves both public and private resources.

Since January 1969 when the FCC-NARUC Separations Manual was made part of the FCC's rules, NARUC has had at its disposal the opportunity to petition the Commission for rulemaking to change separations procedures. Nevertheless, NARUC found the existing methods of arriving at separations procedures to be insufficient for adequate expression of the interests of the States.

The FCC, by letter of March 17, 1970, to the NARUC, suggested that pending jurisdictional separations proposals be considered by a Federal-State joint board. The FCC on May 20, 1970, adopted a notice of proposed rulemaking and order convening the joint board pursuant to its authority under the Communications Act of 1934, as amended, 47 U.S.C. 410.

That joint board operated under procedures almost identical to those which would be mandatory by H.R. 7048. Thus, the board consisted of three FCC commissioners and four State commissioners nominated by NARUC, with the Chairman of the FCC serving as the chairman of the joint board.

On August 6, 1970, the joint board convened, and a week later it recommended proposed rule changes to the FCC. Shortly thereafter, the Commission issued a further notice of proposed rulemaking, calling for comments from interested parties on the proposal—the so-called

Ozark plan—of the joint board. On October 28, 1970, the Commission adopted a report and order which adopted the recommendations of the joint board on jurisdictional separations. The revised procedure resulted in an additional shift of approximately \$126 million in revenue requirements from intrastate to interstate operations.

Your committee was kept advised of developments as they arose during this period. These developments demonstrated a further attempt on the part of both the FCC and the States to cooperate in setting separations procedures.

During these proceedings, the FCC and the NARUC reached agreement on legislation which would write into law the procedures then being followed. This legislation is H.R. 7048 which passed the House on August 2, 1971.

#### PROVISIONS OF THE BILL

In essence, H.R. 7048 would make mandatory the procedures voluntarily followed last year in the formulation of the Ozark Plan.

H.R. 7048 would amend section 410 of the Communications Act of 1934, as amended, 47 U.S.C. § 410, to provide for a Federal-State Joint Board to consider matters regarding jurisdictional separation of communications common carrier property and expenses between interstate and intrastate services. As in section 410(a) of the act, the proposed section 410(c) would provide that the joint board's decision is the equivalent of an examiner's opinion in that it would "prepare a recommended decision for prompt review and action by the Commission."

The joint board would have seven members: Three FCC Commissioners selected by the Commission and four State commissioners nominated by the national organization of the State commissions, and approved by the Federal Communications Commission. The Chairman of the Federal Communications Commission would be the chairman of the joint board if he is on the board. Otherwise, the full Commission would designate the chairman of the joint board.

The bill would require that once the Commission institutes a proceeding pursuant to a notice of proposed rulemaking regarding jurisdictional separations it must refer the matter to the joint board. However, the Commission could deny a petition for rulemaking without first referring it to the joint board. The Commission may, in addition, refer other communications common carrier matters of concern to both Federal and State governments to the joint board except where such action would run counter to the general provisions of section 409 of the act relating to adjudicatory cases and depositions, subpoenas and other matters regarding witnesses.

When the Commission considers the recommended decision of the board, or other orders of decisional importance regarding the separations proceeding, it must allow the State members of the joint board the opportunity to sit *en banc* with the Commission for oral arguments and deliberations. In order to retain Federal superintendence in this field, however, the State members would not vote on the final decision.

#### C. Legislative consideration

The House Subcommittee on Communications and Power held hearings on H.R. 7048 on June 28, 1971. The Chairman of the FCC and the

President of the NARUC testified in favor of H.R. 7048, and no one appeared in opposition to it.

Your committee has in recent weeks received many communications from a substantial number of State regulatory commissions throughout the United States urging immediate action. In addition, it held extensive hearings in the Ninety-First Congress on this matter. At those hearings, besides the FCC, representatives from over 40 State utility commissions appeared or filed statements.

### CONCLUSION

The procedures for setting jurisdictional separations of costs and expenses for interstate and intrastate communications carrier operations should be decided with both Federal and State participation. The provisions of H.R. 7048 would achieve the purpose of joint participation without abandoning Federal superintendence in the field.

### COST ESTIMATES PURSUANT TO SECTION 252 OF THE LEGISLATIVE REORGANIZATION ACT OF 1970

Enactment of the bill will not result in any additional cost to the Government.

The committee is not aware of any estimates of cost by any Federal agency which are different from the estimate made by the committee in the preceding paragraph.

### CHANGES IN EXISTING LAW

In compliance with Subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in *italic*):

### SECTION 410 OF THE COMMUNICATIONS ACT OF 1934

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#### TITLE IV—PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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#### USE OF JOINT BOARDS—COOPERATION WITH STATE COMMISSIONS

SEC. 410. (a) Except as provided in section 409, the Commission may refer any matter arising in the administration of this Act to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 11 of the Administrative Procedure Act, designated by the Commission, and

shall be subject to the same duties and obligations. The action of a joint board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee, Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) *The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a Notice of Proposed Rule Making and, except as provided in Section 409 of this Act, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions, as referred to in sections 202(b) and 205(f) of the Interstate Commerce Act, and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.*

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